

AMENDED IN ASSEMBLY MAY 18, 2006

AMENDED IN ASSEMBLY MAY 8, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2564

Introduced by Assembly Member Matthews

February 23, 2006

An act to amend Section 1265.5 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2564, as amended, Matthews. Health facilities: criminal record clearances.

Existing law provides for the licensure of various intermediate care facilities by the State Department of Health Services. Prior to the initial licensure or license renewal for these facilities, the department is required to secure from an appropriate law enforcement agency a criminal record to determine whether any direct care staff has ever been convicted of a crime other than a minor traffic violation. Existing law defines direct care staff and requires the department to develop procedures to ensure that any licensee, direct care staff, or certificate holder for whom a criminal record has been obtained pursuant to specified provisions of existing law shall not be required to obtain multiple criminal record clearances. Existing law requires persons employed as consultants and acting as direct care staff to be subject to the same requirements for a clearance as other direct care staff.

This bill would prohibit specified persons employed as consultants and acting as direct care staff from being required to obtain a separate criminal record clearance.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1265.5 of the Health and Safety Code is
2 amended to read:

3 1265.5. (a) Prior to the initial licensure or renewal of a
4 license of any person or persons to operate or manage an
5 intermediate care facility/developmentally disabled habilitative,
6 an intermediate care facility/developmentally disabled nursing, or
7 an intermediate care facility/developmentally disabled, other than
8 an intermediate care facility/developmentally disabled operated
9 by the state that secures criminal record clearances for its
10 employees through a method other than as specified in this
11 section or upon the hiring of direct care staff by any of these
12 facilities, the state department shall secure from an appropriate
13 law enforcement agency a criminal record to determine whether
14 the applicant, facility administrator or manager, any direct care
15 staff, or any other adult living in the same location, has ever been
16 convicted of a crime other than a minor traffic violation.

17 (b) (1) The application for licensure or renewal shall be
18 denied if the criminal record indicates that the person seeking
19 initial licensure or renewal of a license referred to in subdivision
20 (a) has been convicted of a violation or attempted violation of
21 any one or more of the following Penal Code provisions: Section
22 187, subdivision (a) of Section 192, Section 203, 205, 206, 207,
23 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1,
24 Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,
25 subdivisions (c), (d), (f), and (g) of Section 286, Section 288,
26 subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5,
27 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d
28 to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666,
29 unless any of the following applies:

30 (A) The person was convicted of a felony and has obtained a
31 certificate of rehabilitation under Chapter 3.5 (commencing with
32 Section 4852.01) of Title 6 of Part 3 of the Penal Code and the

1 information or accusation against the person has been dismissed
2 pursuant to Section 1203.4 of the Penal Code with regard to that
3 felony.

4 (B) The person was convicted of a misdemeanor and the
5 information or accusation against the person has been dismissed
6 pursuant to Section 1203.4 or 1203.4a of the Penal Code.

7 (C) The person was convicted of a felony or a misdemeanor,
8 but has previously disclosed the fact of each conviction to the
9 department and the department has made a determination in
10 accordance with law that the conviction does not disqualify the
11 person.

12 (D) The person was convicted of a misdemeanor violation of
13 Section 488 or 496 and has had no subsequent conviction of
14 either offense in the last five years. This paragraph shall become
15 inoperative on August 1, 2001.

16 (2) The application for licensure or renewal shall be denied if
17 the criminal record of the person includes a conviction in another
18 state for an offense that, if committed or attempted in this state,
19 would have been punishable as one or more of the offenses set
20 forth in paragraph (1), unless evidence of rehabilitation
21 comparable to the dismissal of a misdemeanor or a certificate of
22 rehabilitation as set forth in subparagraph (A) or (B) of paragraph
23 (1) is provided to the department.

24 (c) If the criminal record of a person described in subdivision
25 (a) indicates any conviction other than a minor traffic violation or
26 other than a conviction listed in subdivision (b), the department
27 may deny the application for licensure or renewal. In determining
28 whether or not to deny the application for licensure or renewal
29 pursuant to this subdivision, the department shall take into
30 consideration the following factors as evidence of good character
31 and rehabilitation:

32 (1) The nature and seriousness of the offense under
33 consideration and its relationship to their employment duties and
34 responsibilities.

35 (2) Activities since conviction, including employment or
36 participation in therapy or education, that would indicate changed
37 behavior.

38 (3) The time that has elapsed since the commission of the
39 conduct or offense referred to in paragraph (1) or (2) and the
40 number of offenses.

1 (4) The extent to which the person has complied with any
2 terms of parole, probation, restitution, or any other sanction
3 lawfully imposed against the person.

4 (5) Any rehabilitation evidence, including character
5 references, submitted by the person.

6 (6) Employment history and current employer
7 recommendations.

8 (7) Circumstances surrounding the commission of the offense
9 that would demonstrate the unlikelihood of repetition.

10 (8) The granting by the Governor of a full and unconditional
11 pardon.

12 (9) A certificate of rehabilitation from a superior court.

13 (d) Nothing in this section shall be construed to require a
14 criminal record check of a person receiving services in an
15 intermediate care facility/developmentally disabled habilitative,
16 intermediate care facility/developmentally disabled-nursing, or
17 intermediate care facility/developmentally disabled.

18 (e) For purposes of this section, “direct care staff” means all
19 facility staff who are trained and experienced in the care of
20 persons with developmental disabilities and who directly provide
21 program and nursing services to clients. Administrative and
22 licensed personnel shall be considered direct care staff when
23 directly providing program and nursing services to clients.
24 Persons employed as consultants and acting as direct care staff
25 shall be subject to the same requirements for a criminal record
26 clearance as other direct care staff. However, the employing
27 facility shall not be required to pay any costs associated with that
28 criminal record clearance.

29 (f) Upon the employment of any person specified in
30 subdivision (a), and prior to any contact with clients or residents,
31 the facility shall submit fingerprint cards to the department for
32 the purpose of obtaining a criminal record check.

33 (g) The department shall develop procedures to ensure that
34 any licensee, direct care staff, or certificate holder for whom a
35 criminal record has been obtained pursuant to this section or
36 Section 1338.5 or 1736 shall not be required to obtain multiple
37 criminal record clearances.

38 (h) In addition to the persons who are not required to obtain
39 multiple criminal record clearances pursuant to subdivision (g), a

1 person shall not be required to obtain a separate criminal record
2 clearance if the person meets all of the following criteria:

3 (1) The person is employed as a consultant and acts as direct
4 care staff.

5 (2) The person is a registered nurse, licensed vocational nurse,
6 physical therapist, occupational therapist, or ~~speech therapist~~
7 *speech-language pathologist*.

8 (3) The person has obtained a criminal record clearance as a
9 prerequisite to holding a license or certificate to provide direct
10 care services.

11 (4) The person has a license or certificate to provide direct
12 care service that is in good standing with the appropriate
13 licensing or certification board.

14 (5) The person is providing time-limited, specialized clinical
15 care or services.

16 (6) The person is not left alone with a client.